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December 20, 2021

**VIA ELECTRONIC FILING**

Ms. A. Shonta Dunston  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's  
Reply Comments  
Docket No. E-100, Sub 177**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find *Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Reply Comments.*

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

Jack E. Jirak

Enclosure

cc: Parties of Record

OFFICIAL COPY

Dec 20 2021

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 177

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Rulemaking Proceeding to Implement        )  
Securitization of Early Retirement of        )  
Subcritical Coal-Fired Generating            )  
Facilities    )    **DUKE ENERGY CAROLINAS, LLC’S  
AND DUKE ENERGY PROGRESS,  
LLC’S REPLY COMMENTS**

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, the “Companies”) and hereby file the following reply comments pursuant to the North Carolina Utilities Commission’s (“Commission”) October 14, 2021 *Order Requesting Comments and Proposed Rules*. Specifically, the Companies respond to initial comments filed by the Public Staff—North Carolina Utilities Commission (“Public Staff”), Carolina Utilities Customers Association, Inc. (“CUCA”), North Carolina Clean Energy Association (“NCSEA”), Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”), together with the Carolina Industrial Group for Fair Utility Rates III (“CIGFUR III”) (collectively, “CIGFUR”), Sierra Club, together with the National Resource Defense Counsel (“Sierra Club/NRDC”), and Apple Inc., together with Meta Platforms, Inc. and Google LLC (collectively, “Tech Customers”) (“Initial Commenters”).

**BACKGROUND**

Securitization is a financing tool that can reduce a public utility’s overall debt and equity financing costs with low interest, long-term bonds secured by customer payments. Customers may benefit from securitization because the cost of securitized debt can be

lower than the public utility's typical cost of capital using traditional public utility financing mechanisms.<sup>1</sup> Most recently, pursuant to N.C. Gen. Stat. § 62-172 (the "Storm Securitization Statute"), the Companies worked closely with the Commission to securitize over \$1 billion in storm recovery costs, resulting in approximately 35% customer savings as compared to traditional recovery methods. In appropriate circumstances, the Companies support securitization as a useful financing tool that can produce customer savings.

On October 13, 2021, the Governor of North Carolina signed into law House Bill 951 (S.L. 2021-165 or "HB 951"). Section 5 of HB 951 authorizes the Commission to establish rules by April 11, 2022, for the securitization of costs associated with the early retirement of subcritical coal-fired generating facilities ("Coal Retirement Securitization Rule"). Specifically, Section 5 directs the Commission to adopt a Coal Retirement Securitization Rule(s) that is "substantively identical to the provisions of Section 1 of S.L. 2019-244 [i.e., N.C. Gen. Stat. § 62-172], except with respect to the purposes for which securitization may be used under that section."

On October 14, 2021, the Commission issued its *Order Requesting Comments and Proposed Rules* allowing parties to this proceeding to file comments and proposed rules on the securitization of costs associated with the early retirement of subcritical coal-fired generating facilities on or before November 22, 2021, and reply comments on or before December 20, 2021.

On November 22, 2021, the Companies filed a proposed Coal Retirement Securitization Rule, that, in accordance with HB 951, reflects securitization procedures that are substantively identical to the processes approved by the Commission and utilized by

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<sup>1</sup> Direct Testimony of Charles Atkins, II, at 7-8, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (filed Oct. 26, 2020).

DEC and DEP for their recently completed storm securitization bond issuances. Other parties to this proceeding filed initial comments and Sierra Club/NRDC, with support from NCSEA, also filed a proposed rule. The Companies respond to these initial comments and proposed rule provisions as follows

### **REPLY COMMENTS**

#### **I. Initial Commenters raise concerns regarding the sufficiency of HB 951.**

As originally explained in the Companies' Joint Application for Financing Orders filed in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243, "to maximize the benefits from securitization for customers, it is necessary to obtain AAA-equivalent credit ratings" for the issuance of securitization bonds. As further explained in the Companies' Joint Application for Financing Orders,

[n]ecessary elements for [AAA] credit ratings include, but are not limited to: (1) the nonbypassability of the storm recovery charges pursuant to N.C. Gen. Stat. § 62-172(b)(3)b.4; (2) a true sale of the storm recovery property to a bankruptcy-remote issuer, which will be each utility's respective SPE; (3) a mandatory periodic formula-based true-up mechanism to adjust storm recovery charges to ensure that storm recovery bond debt service and ongoing financing costs are paid on time as scheduled; (4) the requirement that the Commission will not amend, modify, or terminate the Financing Orders or otherwise adjust the storm recovery charges, except for the periodic true-ups, as required by N.C. Gen. Stat. §§ 62-172(b)(3)e. and (k); (5) the pledge to the holders of storm recovery bonds of the SPE collection accounts established for timely remittances of storm recovery charges; (6) a statutory pledge that neither the State nor the Commission may impair the rights of storm recovery bond holders; (7) provisions for successor servicers and related fees; and (8) demonstration that the proposed transaction structures are designed to satisfy specified rating agency stress case cash flow scenarios.

The Tech Customer's initial comments<sup>2</sup> explain how the Storm Securitization Statute specifically enumerates these "necessary elements" for a AAA credit rated

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<sup>2</sup> Initial Comments of Tech Customers at 5.

securitization, while HB 951, in contrast, simply directs the Commission to promulgate rules that are “substantially identical to the provision of Section 1 of S.L. 2019-244.” Thus, as written, HB 951 generally delegates to the Commission the authority to prescribe and implement the necessary elements for a AAA-rated securitization through this rulemaking and the proposed Coal Retirement Securitization Rule as opposed to statutorily enumerating these necessary elements as is the case of the Storm Securitization Statute. Each initial commenter apart from Sierra Club/NRDC, however, questions whether the Commission possesses the necessary authority to fully effectuate the proposed Coal Retirement Securitization Rule in accordance with HB 951 in a manner that will ensure AAA-rated coal retirement bonds.

For example, CUCA alleges that the Storm Securitization Statute “includes a number of enactments that fall outside the Commission’s usual administrative authority,” and that it is therefore “[unclear] whether the General Assembly may properly delegate its authority” to the Commission by mere reference to the Storm Securitization Statute in HB 951.<sup>3</sup> CIGFUR expresses “concern[] that the enabling language [of HB 951] authorizing the Commission to utilize securitization as a tool to mitigate rate impacts of the early retirement of [the Companies’] coal fleet may be insufficient to some bond underwriting companies, inasmuch as an incorporation by reference to a different statute governing securitization of materially different costs may be insufficient, thereby potentially reducing or even eliminating ratepayer savings realized.”<sup>4</sup> Tech Customers argue that it is “highly preferable that the Commission act with the backstop of express enabling legislation, at a minimum, along the lines adopted in [the Storm Securitization Statute]” and, in support of

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<sup>3</sup> Initial Comments of CUCA at 5-6.

<sup>4</sup> Initial Comments of CIGFUR at 3.

their argument, state that they are “unaware of any state that has sought to effectuate securitization” through a rulemaking in the “absence of specific legislation.”<sup>5</sup>

The Public Staff<sup>6</sup> and other parties<sup>7</sup> specifically question the “sufficiency of [the Commission] adopting a rule pursuant to [HB 951] as it relates to the statutory pledge” required for a AAA-rated securitization and as enumerated in section (k) of the Storm Securitization Statute, since such pledge requires the Commission to bind other state agencies. CUCA and Tech Customers also question the Commission’s authority to create a property interest and rules for security interests that supersede the North Carolina Uniform Commercial Code.<sup>8</sup>

Tech Customers further argue that the Commission must resolve these “threshold questions” regarding the sufficiency of HB 951 prior to adopting a proposed Coal Retirement Securitization Rule.<sup>9</sup> Public Staff, CIGFUR, and CUCA similarly state the Commission (or the Companies) should obtain bond counsel to provide an opinion on the sufficiency of HB 951.<sup>10</sup>

At this time, the Companies have not fully evaluated the arguments of intervenors as enumerated above nor reached a position on the points raised as to the legal sufficiency of HB 951 to accomplish its goals. Instead, the Companies have focused on developing and proposing a Coal Retirement Securitization Rule in accordance with HB 951 and in response to the Commission’s *Order Requesting Comments and Proposed Rule*, under the assumptions that the Commission possesses the requisite authority to issue the Coal

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<sup>5</sup> Initial Comments of Tech Customers at 5-7.

<sup>6</sup> Initial Comments of Public Staff at 4.

<sup>7</sup> Initial Comments of Tech Customers at 5-7; Initial Comments of CUCA at 5-8.

<sup>8</sup> *Id.*

<sup>9</sup> Initial Comments of Tech Customers at 7.

<sup>10</sup> Initial Comments of Public Staff at 4, Initial Comments of CIGFUR at 3; Initial Comments of CUCA at 8.

Retirement Securitization Rule and that HB 951 is sufficient as written.<sup>11</sup> However, should it be determined at a future date that additional statutory modifications are required to achieve a successful securitization, the Companies are committed to dialoguing with interested parties to explore such changes.

## **II. Recommendations regarding the Companies' proposed Coal Retirement Securitization Rule.**

Section 5 of HB 951 prescribes the adoption of a Coal Retirement Securitization Rule(s) “substantively identical to the provisions of [the Storm Securitization Statute], except with respect to the purposes for which securitization may be used under that section.” Based upon this statutory requirement, the Companies developed the Coal Retirement Securitization Rule by first directly prescribing relevant provisions of the Storm Securitization Statute into the proposed rule, including the provisions containing the above-described “necessary elements” for a AAA-rated securitization.

In addition, the Companies included relevant terms from the Agreement and Stipulation of Partial Settlement between the Companies and the Public Staff filed on January 27, 2021, in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 regarding the

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<sup>11</sup> The Companies categorically reject CUCA’s recommendation that the Commission require DEC and DEP to “indemnify and hold harmless [customers] from any costs and expenses that are incurred with any unsuccessful securitization efforts” on the basis that the Companies were allegedly “the chief proponent of HB 951 and the party most responsible for its passage.” See CUCA Initial Comments at 8. CUCA’s notion that the application of the law should be impacted by who is alleged to be the “chief proponent” of such law is unprecedented and erroneous. Statutes are to be interpreted based on their plain meaning in accordance with established principles of statutory interpretation. See, e.g. *State ex rel. Utilities Commission v. Stein*, 851 S.E.2d 237, 263–64 (N.C. 2020). Subjective judgements regarding which party is “most responsible” for the passage of a law have no relevance. Moreover, CUCA’s initial comments ignore the unique bipartisan nature of HB 951’s enactment, further highlighting the unreasonableness of CUCA’s extreme recommendation and underlying support thereof. To the extent that anyone is deemed to be the “chief proponent” of HB 951 or “party most responsible for its passage”, the most likely candidates are the overwhelming and historic bipartisan majorities in the General Assembly that approved HB 951 and Governor Cooper who signed the bill into law. In addition, there is no legally sufficient basis upon which the relief sought by CUCA could be granted under either the general authority of the Commission or HB 951. As such, CUCA’s recommendation should be rejected.

calculation and tracking of certain financing costs and charges. The Companies also included relevant terms from the Financing Orders issued in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 for storm securitization, such as provisions relating to a bond advisory team and related “Best Practices” advocated by the Public Staff. Therefore, the Companies’ proposed Coal Retirement Securitization Rule represents a comprehensive prescription of the relevant provisions of the Storm Securitization Statute, storm securitization Financing Orders, and Commission-approved storm securitization settlement agreement between the Companies and the Public Staff.

Several parties’ initial comments make general recommendations for the proposed coal retirement securitization rule but do not propose specific rule provisions, apart from Sierra Club/NRDC. For purposes of these reply comments, the Companies will evaluate Initial Commenter’s rule recommendations in the context of the Companies’ Coal Retirement Securitization Rule and propose revisions to the rule as necessary. Attached to these reply comments is an updated version of the Companies’ proposed Coal Retirement Securitization Rule in clean (Attachment A) and redline (Attachment B) format based on the evaluation of the parties’ initial comments.

- a. The proposed Coal Retirement Securitization Rule appropriately ensures customer savings are achieved through securitization as compared to traditional cost recovery.**

Initial Commenters to this proceeding agree that securitization is a useful financing tool that can produce customer savings. For example, Tech Customers state that the “use of securitization—if implemented properly—is much preferable to simply allowing stranded costs to remain on the books and be charged to ratepayers at the utility’s rate of

return.”<sup>12</sup> CUCA “supports securitization as a tool...to mitigate impacts on ratepayers.”<sup>13</sup> CIGFUR similarly states that “the successful securitization of the maximum amount of coal retirement-related costs allowable by law will serve the public interest by realizing cost savings for ratepayers while simultaneously allowing [the Companies] to fully recover its costs incurred in the provision of electric service to customers.”<sup>14</sup> Sierra Club/NRDC, with support from NCSEA, cites to the Securitization for Generation Asset Retirement Study Group Work Products from the 2020 NC Energy Regulatory Process stating that securitization “has the potential to create a win-win-win for customers, utilities, and communities,” as well as proposes rules allowing for the securitization of undepreciated coal plant balances.<sup>15</sup> The Public Staff “support[s] the approach that produces the greatest savings for customers,” thus supporting securitization where greater customer savings are achieved as compared to the traditional method of recovery.<sup>16</sup>

The Companies agree that securitization should be more favorable when compared to traditional ratemaking before a financing petition is approved and have included the following language with respect to filing requirements for a securitization petition in their proposed rules under section (f)(2)(v):

A comparison between the net present value of the costs to customers that are estimated to result from the issuance of coal retirement bonds and the costs that would result from the application of the traditional method of financing and recovering coal retirement costs from customers. The comparison should demonstrate that the issuance of coal retirement bonds and the imposition of coal retirement charges are expected to provide quantifiable benefits to customers. For purposes of this comparison, the traditional method of financing and recovering net book value of coal plants upon retirement shall mean the establishment of a regulatory asset and

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<sup>12</sup> Initial Comments of Tech Customers at 3.

<sup>13</sup> Initial Comments of CUCA at 2.

<sup>14</sup> Initial Comments of CIGFUR at 2.

<sup>15</sup> Sierra Club/NRDC Cover Letter at 1.

<sup>16</sup> Initial Comments of the Public Staff at 5.

recovery of the amortization expenses over a period to be determined by the Commission plus a return on the unamortized balance at the public utility's weighted average cost of capital, as defined in its most recent base rate case proceeding before the Commission.

Accordingly, the Companies submit that the proposed Coal Retirement Securitization Rule appropriately requires customer savings to be achieved through securitization as compared to traditional cost recovery, thereby ensuring securitization of costs related to the retirement of subcritical coal-fired generating facilities achieves the goal of customer savings as articulated in initial comments.

**b. For purposes of calculating net book value, the Companies recommend that net book value be initially calculated as of the date the subcritical coal-fired facility is retired, subject to appropriate adjustments.**

The Public Staff states that pursuant to HB 951, “the dates at which the remaining net book value of each retired plant will become a regulatory [asset] eligible for securitization (i.e., the retirement date) is discretionary at this time.”<sup>17</sup> The Public Staff goes on to state that the retirement date and resulting net book value of each retired subcritical coal-fired generating facility “may be an integral part of determining the lowest present value (least cost) of revenue requirements achievable pursuant to [HB 951], and will need to be combined with the resolution of the question as to whether securitization is in fact more beneficial to the ratepayer in each instance than retirement without securitization.”<sup>18</sup>

The Companies agree with the Public Staff that the retirement date of the subcritical coal-fired generating facilities, and thus the date when the net book value is transferred

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<sup>17</sup> Initial Comments of the Public Staff at 4-5. The Companies note that the Public Staff's initial comments use the term “regulatory liability,” but the Companies believe the Public Staff meant to use the term “regulatory asset.”

<sup>18</sup> *Id.*

from plant in service to a regulatory asset, will be determined by the Commission as part of the Carbon Plan. The Companies further agree with the Public Staff that the retirement dates will have a direct effect on the net book values of subcritical coal-fired generating facilities, and, as a result, the required comparison of costs association with securitization versus traditional cost recovery.

As written, the Companies' proposed Coal Retirement Securitization Rule requires the utility to show that securitization will result in quantifiable benefits for customers compared to traditional ratemaking in its financing petition. Since the retirement dates will be known by the time of the financing petition, the Companies' proposed rule appropriately addresses this issue.

**c. The Companies do not oppose the Public Staff's recommended interpretation of the calculation of 50% remaining net book value of subcritical coal-fired generating facilities.**

The Public Staff's comments state that they are "uncertain at this time whether the phrase in [HB 951], Section 5, 'fifty percent (50%) of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired' means 50% of the remaining net book value [] of each retired plant or 50% of the remaining [net book value] of all the plants in the aggregate."<sup>19</sup> The Public Staff goes on to state that they "support the approach that produces the greatest savings for customers."<sup>20</sup>

As the North Carolina Supreme Court held in *State ex rel. Utilities Commission v. Stein*, "the cardinal principle of statutory construction is that the words of the statute must be given the meaning which will carry out the intent of the Legislature" and that the legislative "intent must be found from the language of the act..." *Stein*, 851 S.E.2d 237,

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<sup>19</sup> Initial Comments of the Public Staff at 5.

<sup>20</sup> *Id.*

263–64 (N.C. 2020) (citing *Milk Commission v. Food Stores*, 270 N.C. 323, 332–33, 154 S.E.2d 548, 555 (1967)). The Companies submit that HB 951 plainly states that costs to be securitized are 50% of remaining net book value of “all” subcritical coal-fired electric generating facilities to be retired, which arguably most supports the Public Staff’s latter interpretation that HB 951 allows for the securitization of 50% of the remaining net book value of all retired subcritical coal-fired generating facilities in the aggregate.

Although the Companies do not oppose the Public Staff’s suggestion that whichever interpretation of this section of HB 951 produces the most customer savings should govern, the Companies want to ensure that any interpretation of HB 951 adheres to North Carolina’s legal principles of statutory interpretation. In addition, under the Companies’ proposed approach of calculating net book value as of the date a subcritical coal-fired facility is retired, the results are the same regardless of how the “fifty percent (50%) of the remaining net book value” language is interpreted.<sup>21</sup>

As written, the Companies’ proposed Coal Retirement Securitization Rule directly restates the “(50%) of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired” but adds qualifying language that “up to” this amount may be securitized. Based on this language, the Companies submit that the proposed Coal Retirement Securitization Rule is appropriate as written and no revisions to the rule are necessary.

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<sup>21</sup> No matter how HB 951 is applied, the result should be full recovery of capital costs associated with the early retirement of subcritical coal-fired facilities by DEC and DEP.

**d. The Companies support defining “subcritical coal-fired generating facilities” in the Coal Retirement Securitization Rule.**

CUCA’s initial comments recognize that “subcritical coal-fired electric generating facilities” is not defined in HB 951.<sup>22</sup> As such, and also because there is no comparable term in the Storm Securitization Statute, the Companies did not include a definition of subcritical coal-fired generating facilities in the proposed Coal Retirement Securitization Rule.

CUCA, however, argues that the term “subcritical coal-fired electric generating facilities” “is critical to the implementation of the [HB 951]—and given that [the Companies] presumably [are] in possession of information relevant to this term—[the Companies] should be required to identify the facilities it contends fall within this definition, and its rationale for identifying such facilities....”<sup>23</sup>

The Companies do not consider CUCA’s request unreasonable, and support defining “subcritical coal-fired electric generating facilities” in the proposed Coal Retirement Securitization Rule. Therefore, the Companies have revised the proposed Coal Retirement Securitization Rule to contain the following definition:

Subcritical coal-fired generating facilities. – A facility with boiler(s) where constant temperature boiling water cools the furnace enclosure, and the flow circuits are designed to accommodate a two-phase steam-water flow and boiling phenomena. Such boilers typically operate at a pressure near 2400 psi (16.5 MPa) with superheat and reheat steam temperatures ranging from 1000 to 1050F.<sup>24</sup>

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<sup>22</sup> Initial Comments of CUCA at 9.

<sup>23</sup> *Id.*

<sup>24</sup> This definition is informed by an industry standard definition. See J. B. Kitto and S.C. Stultz, STEAM: ITS GENERATION AND USE, Babcock & Wilcox Company (41<sup>st</sup> ed. 2005).

The Companies submit that this added definition addresses CUCA’s comments and request the Commission approve this revision to the proposed Coal Retirement Securitization Rule, as illustrated in Attachment A and Attachment B to these reply comments.

**e. Sierra Club/NRDC’s proposed rule and the model rules suggested by CUCA do not adhere to HB 951 and should be rejected.**

Sierra Club/NRDC included with their initial comments proposed rules for the securitization of costs associated with the early retirement of subcritical coal-fired generating facilities. As explained by Sierra Club/NRDC, their “proposed rules are an effort to provide specific requirements for a complete and transparent record at the beginning of a financing order proceeding.”<sup>25</sup> CUCA in its initial comments requested that “any proposed rules should be modeled on the draft statutory provisions set forth in Edition 2 of HB 951” as well as the Storm Securitization Statute.

HB 951 plainly states that the proposed Coal Retirement Securitization Rule should be “substantially identical” to the Storm Securitization Statute. The proposed rule by Sierra Club/NRDC is not “substantially identical” to the Storm Securitization Statute and should therefore be rejected.

CUCA’s proposed model rule is based on an earlier version of HB 951 that was not enacted. Disregarding the fact that these provisions were not adopted by the General , this version contains provisions that are directly in conflict with HB 951, and should similarly be rejected by the Commission as a “model rule” for the proposed Coal Retirement Securitization Rule. For example, this older version of HB 951 prescribes a specific total amount to be securitized (\$500,000,000), as opposed to allowing for securitization of up to

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<sup>25</sup> Sierra Club/NRDC Cover Letter at 2.

50% net book value of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired.

As explained above, the Companies' proposed Coal Retirement Securitization Rule is appropriately based upon, and "substantially identical" to the Storm Securitization Statute. The Companies' proposed rule additionally considers the Commission-approved securitization settlement as well as the Commission's Financing Orders issued in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243. Therefore, the Companies' proposed Coal Retirement Securitization Rule most closely aligns to HB 951 and this Commission's (and the Companies' and the Public Staff's) recent experience with securitization and should be utilized over the Sierra Club/NRDC proposed rule and the CUCA suggested model rule.

**f. The Coal Retirement Securitization Rule should remain silent as to green bonds at this time.**

Tech Customers' initial comments include a request that the Commission consider broader uses of securitization.<sup>26</sup> Tech Customers state that "the utility of securitization for utility cost financing can be maximized by allowing for the inclusion of Environmental, Social and Governance ("ESG") criteria," and explain that "ESG criteria are operational standards—such as environmental commitments—that make a potential investment more attractive to socially conscious investors."<sup>27</sup> Tech Customers go on to specifically request that the Commission "require Duke Energy's security instrument to be a "green bond" that includes a commitment by the Companies to replace a meaningful percentage of the retired coal-plant capacity with solar, wind, energy storage, demand-side management, or other carbon-free capacity."<sup>28</sup>

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<sup>26</sup> Initial Comments of Tech Customers at 7.

<sup>27</sup> *Id.* at 7-8.

<sup>28</sup> *Id.*

Duke Energy Corp. has in the past issued green bonds, and the Companies support further evaluating green bonds in the context of public utility securitizations in the future. However, the Companies request the Commission reject any provisions to the Coal Retirement Securitization Rule regarding green bonds as suggested by Tech Customers at this time, and instead support the Coal Retirement Securitization Rule remaining silent as to green bonds so parties have the flexibility to propose the utilization of green bonds in future transactions.

**III. The Companies object to a requirement to project the net book value of subcritical coal-fired generating facilities at this time.**

CUCA's initial comments request that the Companies "be required to disclose the current and projected net book value of the subcritical coal facilities."<sup>29</sup> However, as discussed above in Section II.b., these net book values are dependent on the retirement dates of the subcritical coal-fired generating facilities. Additionally, these net book values are dependent on ongoing CAPEX and changes in depreciation rates between now and the retirement dates. As such, any projections the Companies could provide would be premature and likely to change. Pursuant to the proposed Coal Retirement Securitization Rule, the Companies will provide the subcritical coal-fired generating facilities' projected net book values in any petitions for financing orders.

**CONCLUSION**

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request the Commission consider the foregoing reply comments, approve the proposed Coal Retirement Rule included as Attachment A, and grant any other relief the Commission deems reasonable and appropriate.

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<sup>29</sup> Initial Comments of CUCA at 9.

/s/Jack E. Jirak

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*Counsel for Duke Energy Carolinas, LLC  
and Duke Energy Progress, LLC*

# **ATTACHMENT A**

## **Coal Retirement Securitization Rules Clean Version**

**Docket No. E-100, Sub 177**

## **Rule R8-[ ] FINANCING FOR EARLY RETIREMENT OF SUBCRITICAL COAL-FIRED GENERATING FACILITIES**

- (a) Purpose. — The purpose of this rule is to establish guidelines for the application of Section 5 of House Bill 951, which directs the North Carolina Utilities Commission to develop rules for securitization of costs associated with the early retirement of subcritical coal-fired generating facilities that are substantively identical to the provisions of G.S. 62-172, except with respect to the purpose for which securitization may be used under that statute, and consistent with the public policy of this State as set forth in G.S. 62-2.
- (b) Definitions.
1. Administration fees. — any fees meant to cover expenses associated with administrative functions a public utility may provide to the issuing entity, which functions may include, among others, maintaining the general accounting records, preparation of quarterly and annual financial statements, arranging for annual audits of the entity's financial statements, preparing all required external financial filings, preparing any required income or other tax returns, and related support.
  2. Ancillary agreement. — A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with coal retirement bonds.
  3. Assignee. — A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to coal retirement property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to coal retirement property.
  4. Bond advisory team. — An advisory body of representatives from the public utility, Commission, and Public Staff established at the Commission's discretion to provide input and advice to the public utility regarding the public utility's decisions on structuring, marketing, and pricing of the coal retirement bonds.
  5. Bondholder. — A person who holds a coal retirement bond.
  6. Capital contribution. — the amount contributed to the issuer of the coal retirement bonds by the public utility.
  7. Coal retirement bonds. — Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved coal retirement costs and financing costs, and that are secured by or payable from coal retirement property. If certificates of participation or ownership are issued, references in this Rule to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.
  8. Coal retirement charge. — The amounts authorized by the Commission to repay, finance, or refinance coal retirement costs and financing costs and that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all

existing or future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this State.

9. Coal retirement property. – All of the following:
  - a. All rights and interests of a public utility or successor or assignee of the public utility under a financing order, including the right to impose, bill, charge, collect, and receive coal retirement charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.
  - b. All revenues, collections, claims, rights to payment, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.
10. Coal retirement costs. – All of the following:
  - a. Up to fifty percent (50%) of the remaining net book value of all of a public utility's subcritical coal fired-electric generating facilities retired early or to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of House Bill 951, with any remaining non-securitized costs to be recovered through rates, that are appropriate for recovery from existing and future retail customers receiving transmission or distribution service from such public utility.
  - b. Coal retirement costs shall be net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the public utility for the early retirement of a subcritical coal-fired generating facility such as government grants, or aid of any kind and where determined appropriate by the Commission, and may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the public utility's most recent general rate proceeding. Coal retirement costs includes costs of repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility.
  - c. With respect to coal retirement costs that the public utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other rate-making adjustments appropriate to fairly and reasonably assign or allocate coal retirement to customers over time, shall be addressed in a future general rate proceeding, as may be facilitated by other orders of the Commission issued at the time or prior to such proceeding; provided, however, that the Commission's adoption of a financing order and approval of the issuance of coal retirement bonds may not be revoked or otherwise modified.
11. Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.
12. Commission. – The North Carolina Utilities Commission.
13. Financing costs. – The term includes all of the following:

- a. Interest and acquisition, defeasance, or redemption premiums payable on coal retirement bonds.
  - b. Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to coal retirement bonds.
  - c. Any other cost related to issuing, supporting, repaying, refunding, and servicing coal retirement bonds, including, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of coal retirement bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order.
  - d. Any taxes and license fees or other fees imposed on the revenues generated from the collection of the coal retirement charge or otherwise resulting from the collection of coal retirement charges, in any such case whether paid, payable, or accrued.
  - e. Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued.
  - f. Any costs incurred by the Commission or public staff for any outside consultants or counsel retained in connection with the securitization of coal retirement costs.
14. Financing order. – An order that authorizes the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
  15. Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
  16. Financing statement. – Defined in Article 9 of the Code.
  17. House Bill 951: Session Law 2021-165 signed by the State Governor on October 13, 2021.
  18. Issuance advice letter. – a letter filed no later than one business day after pricing of coal retirement bonds by the public utility detailing the final terms of the pricing and issuance of the coal retirement bonds.
  19. Issuance advice letter process. – A procedure, following the issuance of a financing order but prior to the issuance of coal retirement bonds, where the public utility certifies that the structuring, marketing, and pricing of the coal retirement bonds fully satisfy the statutory cost objectives.
  20. Ongoing financing costs. – Expenses incurred throughout the coal retirement securitization transaction including servicing fees; return on invested capital; administration fees; accounting and auditing fees; regulatory fees; legal fees; rating agency surveillance fees; trustee fees; independent director or manager fees; and other miscellaneous fees associated with the servicing of the coal retirement bonds.

21. Petition for financing order. – A public utility petition requesting a financing order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
22. Petition for review and approval of coal retirement costs. – A public utility petition requesting Commission review and approval of coal retirement costs that are subject to a settlement agreement or review and approval of proposed coal retirement costs generally.
23. Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to coal retirement property.
24. Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
25. Securitizable Balance. – The total amount of costs to be financed, including but not limited to coal retirement costs, financing costs, and carrying charges through the date of issuance.
26. Servicing fee. – In consideration for its servicing responsibilities, a periodic fee paid to the servicer (which may be the public utility) of an issuing entity to be recovery through coal retirement charges. To support bankruptcy analysis necessary to achieve the highest credit rating, the servicing fees must be on arm's length terms and at market-based rates. Such servicing responsibilities will include, without limitation: (i) billing, monitoring, collecting and remitting securitization charges, (ii) reporting requirements imposed by the servicing agreement, (iii) implementing the true-up mechanism, (iv) procedures required to coordinate required audits related to the public utility's role as servicer, (v) legal and accounting functions related to the servicing obligation, and (vi) communication with rating agencies.
27. Statutory cost objectives. – The objectives that: (i) a proposed issuance of coal retirement bonds and the imposition of coal retirement charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds; and (ii) the structuring, marketing, and pricing of coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
28. Subcritical coal-fired generating facilities. – A facility with boiler(s) where constant temperature boiling water cools the furnace enclosure, and the flow circuits are designed to accommodate a two-phase steam-water flow and boiling phenomena. Such boilers typically operate at a pressure near 2400 psi (16.5 MPa) with superheat and reheat steam temperatures ranging from 1000 to 1050F.
29. Tail-end collections. – Collections of coal retirement charges after the coal retirement bonds and all related financing costs have been repaid in full.
30. Transaction documents. – Forms of any purchase and sale agreements, administration agreements, servicing agreements, limited liability company agreements, indentures, or any other documents necessary to execute the issuance of coal retirement bonds.
31. True-up adjustment letter. – A letter applying the formulaic true-up mechanism proposed by a public utility and approved by the Commission in a financing order to be filed at least annually with the Commission to ensure coal retirement charges

are at a sufficient level to meet the public utility's coal retirement bond payment obligations.

32. Up-front financing costs. – Up-front financing costs, which will be financed from the proceeds of the coal retirement bonds, include the fees and expenses to obtain the financing orders, as well as the fees and expenses associated with the structuring, marketing and issuance of each series of coal retirement bonds, including: external and incremental internal legal fees, structuring advisory fees and expenses, any interest rate lock or swap fees and costs (including the cost, if any, associated with interest rate hedges), underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting fees, information technology programming costs, servicer's set-up costs, printing and marketing expenses, stock exchange listing fees and compliance fees, filing and registration fees, and the costs of the outside consultant and counsel, if any, retained by the Commission or the Public Staff. Up-front financing costs include reimbursement to the public utility for amounts advanced for payment of such costs.

(c) Procedure for Coal Retirement Securitization Proceeding.

1. Coal retirement cost review and approval schedule.
  - a. A public utility shall file a petition for review and approval of coal retirement costs at least 90 days prior to filing a petition for financing order for authority to issue coal retirement bonds.
  - b. Within 14 days after the date the petition for review and approval of coal retirement costs is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 180 days after the petition for approval of coal retirement costs is filed. The procedural schedule shall establish a discovery period of no longer than 60 days from the date the petition for review and approval of coal retirement costs is filed.
2. Financing order issuance schedule.
  - a. A public utility may file a petition for a financing order no sooner than 90 days after filing a petition for review and approval of coal retirement costs, if a petition for review and approval of coal retirement costs is filed.
  - b. Within 14 days after the date the petition for a financing order is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition for a financing order is filed.
  - c. No later than 135 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition.
  - d. A party to the securitization proceeding may petition the Commission for reconsideration of a financing order within five days after the date of its issuance.
  - e. Within 60 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina.

(d) Petition for approval of coal retirement costs.

1. Application of rule.

- a. Prior to a public utility filing for a petition for financing order, the public utility shall obtain Commission review and approval of applicable coal retirement costs proposed for financing, through one of the following mechanisms: (a) a prior general rate case order; (b) an order issued in a proceeding initiated for that purpose pursuant to a petition for review and approval of coal retirement costs; or (c) an order issued in a proceeding initiated for approval of a settlement agreement that governs the type and amount of principal costs that could be included in coal retirement costs and the public utility proposes to finance all or a portion of the principal costs using coal retirement bonds.
  - b. Any petition for review and approval of coal retirement costs under Rule R8-[ ](d)1.a. (b) or (c) above shall be filed in a unique sub-docket of the requesting public utility.
2. Filing requirements.
    - a. Any such petition shall include all of the following:
      - i. A description of the subcritical coal-fired generating facilities retired early or proposed to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of House Bill 951,
      - ii. The amount of coal retirement costs.
    - b. A public utility seeking review and approval of proposed coal retirement costs must file a petition at least 90 days prior to the filing of a petition for financing order with respect to such costs.
- (e) Order approving coal retirement costs.
1. An order reviewing and approving coal retirement costs issued by the Commission to a public utility shall include the following:
    - a. A determination of the amount of reasonable and prudent coal retirement costs, including any carrying costs, eligible to be securitized.
    - b. If the coal retirement costs are the subject of a settlement, approval of the settlement.
- (f) Petition for approval of financing order.
1. Application of rule.
    - a. Prior to a public utility issuing coal retirement bonds and implementing a coal retirement charge, the public utility shall obtain a Commission order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
    - b. Any petition for a financing order shall be made in a unique sub-docket of the public utility's docket number; however, if a public utility has previously filed a petition for review and approval of coal retirement costs that are the subject coal retirement costs of a petition for financing order, the petition for financing order shall be filed in the same sub-docket as the petition for review and approval of coal retirement costs.
  2. Filing requirements.
    - a. A public utility may petition the Commission for issuance of a financing order. The petition shall include all of the following:

- i. A description of subcritical electric generating facilities that the public utility has retired early or proposes to retire early for the purpose of achieving the authorized carbon reduction goals set forth in Section 1 of House Bill 951, or if the public utility is subject to a settlement agreement governing coal retirement costs, a description of the settlement agreement.
- ii. The coal retirement costs.
- iii. An estimate of the financing costs related to the coal retirement bonds.
- iv. An estimate of the coal retirement charges necessary to recover the coal retirement costs and financing costs and the period for recovery of such costs.
- v. A comparison between the net present value of the costs to customers that are estimated to result from the issuance of coal retirement bonds and the costs that would result from the application of the traditional method of financing and recovering coal retirement costs from customers. The comparison should demonstrate that the issuance of coal retirement bonds and the imposition of coal retirement charges are expected to provide quantifiable benefits to customers. For purposes of this comparison, the traditional method of financing and recovering net book value of coal plants upon retirement shall mean the establishment of a regulatory asset and recovery of the amortization expenses over a period to be determined by the Commission plus a return on the unamortized balance at the public utility's weighted average cost of capital, as defined in its most recent base rate case proceeding before the Commission.
- vi. Direct testimony and exhibits supporting the petition.
- vii. If the public utility has received a Commission order reviewing and approving coal retirement costs pursuant to any of the mechanisms identified above, a description of the order reviewing and approving the coal retirement costs.
- viii. A proposed transaction structure including, a request for flexibility to tailor the structure to the then-existing market conditions, rating agency considerations, and investor preferences, in order that the issuance of coal retirement bonds achieve the statutory cost objectives.
- ix. A proposed issuance advice letter, true-up adjustment letter, and explanation of the proposed issuance advice letter procedure.
- x. A proposed formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal retirement charges.
- xi. A proposed coal retirement charge tariff.
- xii. A description of how coal retirement charges will be allocated among customer classes.
- xiii. At the public utility's option, a request to establish a regulatory asset to defer any prudently incurred excess amounts of financing costs to preserve for later recovery in the public utility's next general rate case proceeding.

- xiv. At the public utility's option, a request for a regulatory liability account to refund any amounts collected in excess of actual financing costs in the next general rate proceeding.
- xv. Proposed form of transaction documents.
- xvi. A summary of the securitizable balance.
- xvii. A proposed registration, rating agency, and issuance timeline.
- xviii. A proposed financing order containing the elements listed in subpart [(g)(1)] of this Rule.

(g) Financing order.

1. A financing order issued by the Commission to a public utility shall include all of the following:
  - a. Except for changes made pursuant to the formula-based mechanism authorized under this Rule, the amount of coal retirement costs to be financed using coal retirement bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through coal retirement charges and specify the period over which coal retirement costs and financing costs may be recovered.
  - b. A finding that the proposed issuance of coal retirement bonds and the imposition and collection of a coal retirement charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds.
  - c. A finding that the structuring and pricing of the coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in such financing order.
  - d. A requirement that, for so long as the coal retirement bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of coal retirement charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.
  - e. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal retirement charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of coal retirement bonds and financing costs and other required amounts and charges payable in connection with the coal retirement bonds.
  - f. The coal retirement property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure coal retirement bonds and all financing costs.
  - g. The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the coal retirement bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.

- h. How coal retirement charges will be allocated among customer classes.
  - i. A requirement that, after the final terms of an issuance of coal retirement bonds have been established and before the issuance of coal retirement bonds, the public utility determines the resulting initial coal retirement charge in accordance with the financing order and that such initial coal retirement charge be final and effective upon the issuance of such coal retirement bonds without further Commission action so long as the coal retirement charge is consistent with the financing order.
  - j. A method of tracing funds collected as coal retirement charges, or other proceeds of coal retirement property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any coal retirement property subject to a financing order under applicable law.
  - k. Any other conditions not otherwise inconsistent with this Rule that the Commission determines are appropriate.
  - l. A finding that the petition for financing order meets the requirements of this Rule.
  - m. A State of North Carolina pledge of nonimpairment in accordance with section (o) of this Rule.
  - n. A statement that coal retirement bonds are not public debt in accordance with section (m) of this Rule.
  - o. Approval and description of the issuance advice letter process.
  - p. Approval and copy of a proposed issuance advice letter, true-up adjustment Letter, and coal retirement charge tariff.
  - q. Approval of the form of transaction documents.
  - r. Findings regarding any required certifications and opinion letters to be given during the issuance advice letter process.
2. A financing order issued to a public utility may provide that creation of the public utility's coal retirement property is conditioned upon, and simultaneous with, the sale or other transfer of the coal retirement property to an assignee and the pledge of the coal retirement property to secure coal retirement bonds.
  3. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of coal retirement charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of coal retirement bonds approved under the financing order. Within 30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical or clerical errors in its calculation. If the Commission informs the utility of mathematical or clerical errors

in its calculation, the utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.

4. Subsequent to the transfer of coal retirement property to an assignee or the issuance of coal retirement bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this Rule, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust coal retirement charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer coal retirement property or to cause coal retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.
5. Duration of financing order. –
  - a. A financing order remains in effect and coal retirement property under the financing order continues to exist until coal retirement bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such coal retirement bonds have been recovered in full.
  - b. A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its successors or assignees.

(h) Post-financing order process.

1. Bond advisory team process.
  - a. If the Commission determines that it is necessary to achieve the statutory cost objectives, a financing order may establish a bond advisory team:
    - i. Following issuance of a financing order, bond advisory team meetings shall be held to provide timely information to members regarding aspects of the structuring, marketing, and pricing of the coal retirement bonds.
    - ii. The public utility, the Commission, and the Public Staff shall designate staff, counsel, and consultants to participate on the bond advisory team on their behalf. However, the Public Staff, the Public Staff's designees, the Commission, and the Commission designees are not agents of the public utility in any manner by their participation on a bond advisory team.
    - iii. The bond advisory team may be present during communications with underwriters, credit rating agencies, and investors, the public utility shall use reasonable means to invite bond advisory team to such communications; the public utility shall invite members of the Bond advisory team to join bond advisory team meetings to review and comment on material aspects of the structuring, pricing, and marketing of the coal retirement bonds, including without limitation the following: the selection and retention of underwriters and other transaction participants; the terms of all transaction documents; the length of the bond terms; the interest rates of the bonds (including whether the interest rate is floating or fixed); the capitalization of the

- bonds; the transaction structure; the issuance strategy; appropriate credit enhancements; and the credit rating process.
- b. The public utility shall have the sole right to select all counsel and advisors for the public utility, the underwriters and any issuing entity.
  - c. The public utility shall retain all decision-making authority with respect to the structuring, marketing, and pricing of the coal retirement bonds.
2. Issuance advice letter process.
- a. No later than one day after pricing of the coal retirement bonds, the public utility shall provide an issuance advice letter to the Commission so that the Commission can determine whether the coal retirement bonds comply with the requirements set forth in the public utility's financing order.
  - b. No later than the day the public utility's issuance advice letter is filed, the public utility and each lead underwriter of the coal retirement bonds shall file with the Commission separate certifications confirming that the structuring, marketing, and pricing of coal retirement bonds resulted in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
  - c. The initial coal retirement charges and the final terms of the coal retirement bonds described in the issuance advice letter and true-up adjustment letter will be final unless, before noon on the third business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with the terms of the public utility's financing order.
3. Implementation of coal retirement charges.
- a. Ownership notification and separate line-item charge.
    - i. The public utility's electric bills must explicitly reflect that a portion of the charges on such bill represent coal retirement charges approved in a financing order. The electric bill must also include a statement explaining who is the owner of the rights to the coal retirement charges and, if applicable, that the public utility is acting as servicer for the owner of the rights to the coal retirement charges.
    - ii. The public utility shall identify amounts owed with respect to its coal retirement property as a separate line item on individual electric bills although if there are multiple series of coal retirement bonds, the several coal retirement charges may be consolidated into a single line item.
    - iii. A coal retirement charge tariff must indicate the coal retirement charge and the ownership of that charge.
  - b. True-up of coal retirement charges.
    - i. Coal retirement charges shall be adjusted at least semi-annually until 12 months prior to the last scheduled payment date of a series of the coal retirement bonds, at which point the coal retirement charges may be adjusted at the request of the public utility, to ensure that the amount collected from coal retirement charges is sufficient to pay the debt service on the coal retirement bonds and all financing costs.
    - ii. Upon the filing of a true-up adjustment letter made pursuant to a financing order, the Commission shall either administratively

approve the requested true-up calculation in writing or inform the servicer of the coal retirement bonds of any mathematical or clerical errors in its calculation as expeditiously as possible but no later than 30 days following the servicer's true-up filing; and that notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's filing of a true-up adjustment letter. No potential modification to correct an error in a true-up adjustment letter shall delay its effective date and any correction or modification which could not be made prior to the effective date shall be made in the next True-up adjustment letter. Upon administrative approval or the passage of 30 days without notification of a mathematical or clerical error, no further action of the Commission will be required prior to implementation of the true-up.

- iii. That upon any change to customer rates and charges stemming from the true-up mechanism, the public utility shall file appropriately revised tariff sheets, provided, however, that approval of the coal retirement charges shall not be delayed or otherwise adversely impacted by the Commission's decision with respect to the tariff.
- iv. Up-front financing costs.
  - (1) Once up-front financing costs are known, if actual financing costs are in excess of the amounts estimated, the public utility shall be permitted to pay them on behalf of any issuing entity and may establish a regulatory asset to defer any excess amounts of up-front financing costs, and preserve those costs to consider for later recovery in the public utility's next general rate case. In addition, the regulatory asset shall accrue carrying costs at the public utility's net-of-tax weighted average cost of capital returns.
  - (2) Any excess or over-collection of up-front financing costs may be set aside in a regulatory liability, accruing carrying costs at the public utility's net-of tax weighted average cost of capital returns, to be considered for return to customers in the public utility's next general rate case.
- v. On-going financing costs.
  - (1) The on-going financing costs incurred for the purpose of executing a coal retirement-securitization shall be recovered from coal retirement charges, taking into account the public utility's true-up mechanism and in accordance with this Rule.
  - (2) If determined necessary by the Commission, the public utility may provide detailed invoices and other supporting documentation, if applicable, and narrative explanations of on-going financing charges on a monthly basis, fifteen (15) days after the end of the previous month. If the public utility did not receive any invoices in the previous month, the public utility may notify the Public Staff that no invoices were received where determined necessary by the Commission.

- (3) If determined necessary by the Commission, the Public Staff may have the opportunity to audit on-going financing costs (including auditing through possible additional data requests) for mathematical or clerical errors, or charges incurred as a result of gross negligence, recklessness, or willful misconduct by either the public utility or issuing entity, and the Public Staff shall complete said audit within forty-five (45) days of receipt of the supporting documentation.
  - (4) If determined necessary by the Commission, the Public Staff may have the option to choose to audit the expense during review of the public utility's next true-up mechanism filing.
  - (5) If determined necessary by the Commission, the Public Staff may discuss with the public utility any concerns or proposed changes to the on-going financing cost expenses in an effort to reach an appropriate resolution regarding such on-going financing costs provided, however, that any resolution shall not impair the value of the coal retirement property, the coal retirement charges or the coal retirement bonds. In cases where a resolution cannot be reached between the public utility and Public Staff, the Public Staff will file a recommendation with the Commission, at the time the dispute arises, that the disputed amount be returned to customers, with carrying costs at the public utility's respective net-of-tax weighted average cost of capital returns, in the public utility's next general rate cases, with the issue to be resolved by the Commission in that proceeding.
- vi. Servicing and administration fees.
- (1) If determined necessary by the Commission, the public utility may establish regulatory asset or regulatory liability accounts for, separate and apart from the regulatory assets and liabilities of other types of securitization-related costs and benefits, the purpose of tracking (as received and incurred) servicing and administrative fees received by the public utility from the issuing entity and the incremental costs incurred by the public utility in fulfilling the required functions under the servicing and administrative agreements. Any regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at the public utility's respective net-of-tax weighted average cost of capital, and be considered for recovery from or returned to customers in the public utility's next general rate case.
- vii. Tail-end collections.
- (1) The Commission may require that any tail-end collections by the public utility be tracked separately and placed into a regulatory liability account, and accrue carrying costs at the public utility's net-of-tax weighted average cost of capital, to be considered for recovery in the public utility's next general rate case.

viii. Capital contributions.

- (1) The Commission may require that the public utility's capital contributions to an issuing entity earn a return at the interest rate of the highest tranche of the coal retirement bonds, which is expected to be less than the public utility's weighted average cost of capital.

c. Coal retirement charge collection period.

- i. A financing order and the coal retirement charges authorized thereby shall remain in effect until the coal retirement bonds and all financing costs (including tail-end collections and tax liabilities) related thereto have been paid or recovered in full.
- ii. A financing order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of the public utility or its successors or assignees.

4. Additional financing orders.

- a. At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding coal retirement bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in this Rule for a financing order. Effective upon retirement of the refunded coal retirement bonds and the issuance of new coal retirement bonds, the Commission shall adjust the related coal retirement charges accordingly.

(i) Coal retirement property.

1. Provisions applicable to coal retirement property.

- a. All coal retirement property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of coal retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal retirement charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.
- b. All coal retirement property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of coal retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal retirement charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public

utility or its successors or assignees and the future consumption of electricity by customers.

- c. Coal retirement property specified in a financing order exists until coal retirement bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such coal retirement bonds have been recovered in full.
- d. All or any portion of coal retirement property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the public utility and created for the limited purpose of acquiring, owning, or administering coal retirement property or issuing coal retirement bonds under the financing order. All or any portion of coal retirement property may be pledged to secure coal retirement bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of coal retirement property by a public utility, or an affiliate of the public utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission.
- e. If a public utility defaults on any required payment of charges arising from coal retirement property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the coal retirement property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.
- f. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in coal retirement property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity. Any successor to a public utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the coal retirement property. Nothing in this sub-subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.
- g. Coal retirement bonds shall be nonrecourse to the credit or any assets of the public utility other than the coal retirement property as specified in the financing order and any rights under any ancillary agreement.

2. Provisions applicable to security interests.

- a. The creation, perfection, and enforcement of any security interest in coal retirement property to secure the repayment of the principal and interest and other amounts payable in respect of coal retirement bonds; amounts payable under any ancillary agreement and other financing costs are governed by this Rule and not by the provisions of the Code.
- b. A security interest in coal retirement property is created, valid, and binding and perfected at the later of the time: (i) the financing order is issued, (ii) a security agreement is executed and delivered by the debtor granting such security interest, (iii) the debtor has rights in such coal retirement property or the power to transfer rights in such coal retirement property, or (iv) value is received for the coal retirement property. The description of coal retirement property in a security agreement is sufficient if the description refers to this Rule and the financing order creating the coal retirement property.
- c. A security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of a financing statement with the office of the Secretary of State, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the coal retirement property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, and shall have priority over all competing claims other than any prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this Rule.
- d. The Secretary of State shall maintain any financing statement filed to perfect any security interest under this Rule in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of a financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code.
- e. The priority of a security interest in coal retirement property is not affected by the commingling of coal retirement charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all coal retirement charges that are deposited in any cash or deposit account of the qualifying utility in which coal retirement charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.
- f. No application of the formula-based adjustment mechanism as provided in this Rule will affect the validity, perfection, or priority of a security interest in or transfer of coal retirement property.
- g. If a default or termination occurs under the coal retirement bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any coal retirement property as if they were secured parties with a perfected and prior lien under the Code, and the Commission may order amounts arising from coal retirement charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of

the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the coal retirement charges.

3. Provisions applicable to the sale, assignment, or transfer of coal retirement property.
  - a. Any sale, assignment, or other transfer of coal retirement property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the coal retirement property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in coal retirement property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in coal retirement property may be created only when all of the following have occurred: (i) the financing order creating the coal retirement property has become effective, (ii) the documents evidencing the transfer of coal retirement property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the coal retirement property. After such a transaction, the coal retirement property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the coal retirement property perfected in accordance with this Rule.
  - b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:
    - i. Commingling of coal retirement charges with other amounts.
    - ii. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the coal retirement property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of coal retirement charges.
    - iii. Any recourse that the purchaser may have against the seller.
    - iv. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
    - v. The obligation of the seller to collect coal retirement charges on behalf of an assignee.
    - vi. The transferor acting as the servicer of the coal retirement charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in coal retirement property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the coal retirement charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.

- vii. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
  - viii. The granting or providing to bondholders a preferred right to the coal retirement property or credit enhancement by the public utility or its affiliates with respect to such coal retirement bonds.
  - ix. Any application of the formula-based adjustment mechanism as provided in this Rule.
- c. Any right that a public utility has in the coal retirement property before its pledge, sale, or transfer or any other right created under this Rule or created in the financing order and assignable under this Rule or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in coal retirement property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such coal retirement property or the power to transfer rights in such coal retirement property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of coal retirement bonds, and (iv) the receipt of value for the coal retirement property. An enforceable transfer of an interest in coal retirement property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with this Rule. The transfer is perfected against third parties as of the date of filing.
- d. The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of coal retirement property under this Rule in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of coal retirement property.
- e. The priority of a transfer perfected under this Rule is not impaired by any later modification of the financing order or coal retirement property or by the commingling of funds arising from coal retirement property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under this Rule, is terminated when they are transferred to a segregated account for the assignee or a financing party. If coal retirement property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.
- f. The priority of the conflicting interests of assignees in the same interest or rights in any coal retirement property is determined as follows:
- i. Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with this Rule.
  - ii. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.

- iii. A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.
- (j) Description or indication of property. – The description of coal retirement property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the coal retirement property and states that the agreement or financing statement covers all or part of the property described in the financing order. This Rule applies to all purported transfers of, and all purported grants or liens or security interests in, coal retirement property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.
- (k) Financing statements. – All financing statements referenced in this Rule are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.
- (l) Choice of law. – The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any coal retirement property shall be the laws of this State.
- (m) Coal retirement bonds not public debt. – Neither the State nor its political subdivisions are liable on any coal retirement bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of coal retirement bonds does not, directly, indirectly, or contingently, obligate the State or any agency, political subdivision, or instrumentality of the State to levy any tax or make any appropriation for payment of the coal retirement bonds, other than in their capacity as consumers of electricity. All coal retirement bonds must contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of North Carolina is pledged to the payment of the principal of, or interest on, this bond."
- (n) Legal investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in coal retirement bonds:
  - 1. Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.
  - 2. Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.
  - 3. Personal representatives, guardians, trustees, and other fiduciaries.
  - 4. All other persons authorized to invest in bonds or other obligations of a similar nature
- (o) Obligation of nonimpairment.
  - 1. The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the coal retirement property, and other financing parties

that the State and its agencies will not take any action listed in this subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the coal retirement charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:

- a. Alter the provisions of this Rule, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create coal retirement property, and make the coal retirement charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
  - b. Take or permit any action that impairs or would impair the value of coal retirement property or the security for the coal retirement bonds or revises the coal retirement costs for which recovery is authorized.
  - c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
  - d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this Rule, reduce, alter, or impair coal retirement charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related coal retirement bonds have been paid and performed in full.
2. Any person or entity that issues coal retirement bonds may include the language specified in this Rule in the coal retirement bonds and related documentation.
- (p) Not a public utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this Rule.
  - (q) Conflicts. – If there is a conflict between this Rule and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in coal retirement property, this Rule shall govern.
  - (r) Consultation. – In making determinations under this Rule, the Commission or public staff or both may engage an outside consultant and counsel.
  - (s) Effect of invalidity. – If any provision of this Rule is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this Rule which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all coal retirement bonds issued or authorized in a financing order issued under this Rule before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.

# **ATTACHMENT B**

## **Coal Retirement Securitization Rules Redline Version**

**Docket No. E-100, Sub 177**

## **Rule R8-[ ] FINANCING FOR EARLY RETIREMENT OF SUBCRITICAL COAL-FIRED GENERATING FACILITIES**

- (a) Purpose. — The purpose of this rule is to establish guidelines for the application of Section 5 of House Bill 951, which directs the North Carolina Utilities Commission to develop rules for securitization of costs associated with the early retirement of subcritical coal-fired generating facilities that are substantively identical to the provisions of G.S. 62-172, except with respect to the purpose for which securitization may be used under that statute, and consistent with the public policy of this State as set forth in G.S. 62-2.
- (b) Definitions.
1. Administration fees. — any fees meant to cover expenses associated with administrative functions a public utility may provide to the issuing entity, which functions may include, among others, maintaining the general accounting records, preparation of quarterly and annual financial statements, arranging for annual audits of the entity's financial statements, preparing all required external financial filings, preparing any required income or other tax returns, and related support.
  2. Ancillary agreement. — A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with coal retirement bonds.
  3. Assignee. — A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to coal retirement property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to coal retirement property.
  4. Bond advisory team. — An advisory body of representatives from the public utility, Commission, and Public Staff established at the Commission's discretion to provide input and advice to the public utility regarding the public utility's decisions on structuring, marketing, and pricing of the coal retirement bonds.
  5. Bondholder. — A person who holds a coal retirement bond.
  6. Capital contribution. — the amount contributed to the issuer of the coal retirement bonds by the public utility.
  7. Coal retirement bonds. — Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved coal retirement costs and financing costs, and that are secured by or payable from coal retirement property. If certificates of participation or ownership are issued, references in this Rule to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.
  8. Coal retirement charge. — The amounts authorized by the Commission to repay, finance, or refinance coal retirement costs and financing costs and that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all

existing or future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this State.

9. Coal retirement property. – All of the following:
  - a. All rights and interests of a public utility or successor or assignee of the public utility under a financing order, including the right to impose, bill, charge, collect, and receive coal retirement charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.
  - b. All revenues, collections, claims, rights to payment, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.
10. Coal retirement costs. – All of the following:
  - a. Up to fifty percent (50%) of the remaining net book value of all of a public utility's subcritical coal fired-electric generating facilities retired early or to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of House Bill 951, with any remaining non-securitized costs to be recovered through rates, that are appropriate for recovery from existing and future retail customers receiving transmission or distribution service from such public utility.
  - b. Coal retirement costs shall be net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the public utility for the early retirement of a subcritical coal-fired generating facility such as government grants, or aid of any kind and where determined appropriate by the Commission, and may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the public utility's most recent general rate proceeding. Coal retirement costs includes costs of repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility.
  - c. With respect to coal retirement costs that the public utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other rate-making adjustments appropriate to fairly and reasonably assign or allocate coal retirement to customers over time, shall be addressed in a future general rate proceeding, as may be facilitated by other orders of the Commission issued at the time or prior to such proceeding; provided, however, that the Commission's adoption of a financing order and approval of the issuance of coal retirement bonds may not be revoked or otherwise modified.
11. Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.
12. Commission. – The North Carolina Utilities Commission.
13. Financing costs. – The term includes all of the following:

- a. Interest and acquisition, defeasance, or redemption premiums payable on coal retirement bonds.
  - b. Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to coal retirement bonds.
  - c. Any other cost related to issuing, supporting, repaying, refunding, and servicing coal retirement bonds, including, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of coal retirement bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order.
  - d. Any taxes and license fees or other fees imposed on the revenues generated from the collection of the coal retirement charge or otherwise resulting from the collection of coal retirement charges, in any such case whether paid, payable, or accrued.
  - e. Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued.
  - f. Any costs incurred by the Commission or public staff for any outside consultants or counsel retained in connection with the securitization of coal retirement costs.
14. Financing order. – An order that authorizes the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
  15. Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
  16. Financing statement. – Defined in Article 9 of the Code.
  17. House Bill 951: Session Law 2021-165 signed by the State Governor on October 13, 2021.
  18. Issuance advice letter. – a letter filed no later than one business day after pricing of coal retirement bonds by the public utility detailing the final terms of the pricing and issuance of the coal retirement bonds.
  19. Issuance advice letter process. – A procedure, following the issuance of a financing order but prior to the issuance of coal retirement bonds, where the public utility certifies that the structuring, marketing, and pricing of the coal retirement bonds fully satisfy the statutory cost objectives.
  20. Ongoing financing costs. – Expenses incurred throughout the coal retirement securitization transaction including servicing fees; return on invested capital; administration fees; accounting and auditing fees; regulatory fees; legal fees; rating agency surveillance fees; trustee fees; independent director or manager fees; and other miscellaneous fees associated with the servicing of the coal retirement bonds.

21. Petition for financing order. – A public utility petition requesting a financing order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
22. Petition for review and approval of coal retirement costs. – A public utility petition requesting Commission review and approval of coal retirement costs that are subject to a settlement agreement or review and approval of proposed coal retirement costs generally.
23. Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to coal retirement property.
24. Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
25. Securitizable Balance. – The total amount of costs to be financed, including but not limited to coal retirement costs, financing costs, and carrying charges through the date of issuance.
26. Servicing fee. – In consideration for its servicing responsibilities, a periodic fee paid to the servicer (which may be the public utility) of an issuing entity to be recovery through coal retirement charges. To support bankruptcy analysis necessary to achieve the highest credit rating, the servicing fees must be on arm's length terms and at market-based rates. Such servicing responsibilities will include, without limitation: (i) billing, monitoring, collecting and remitting securitization charges, (ii) reporting requirements imposed by the servicing agreement, (iii) implementing the true-up mechanism, (iv) procedures required to coordinate required audits related to the public utility's role as servicer, (v) legal and accounting functions related to the servicing obligation, and (vi) communication with rating agencies.
27. Statutory cost objectives. – The objectives that: (i) a proposed issuance of coal retirement bonds and the imposition of coal retirement charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds; and (ii) the structuring, marketing, and pricing of coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
- 27-28. Subcritical coal-fired generating facilities. – A facility with boiler(s) where constant temperature boiling water cools the furnace enclosure, and the flow circuits are designed to accommodate a two-phase steam-water flow and boiling phenomena. Such boilers typically operate at a pressure near 2400 psi (16.5 MPa) with superheat and reheat steam temperatures ranging from 1000 to 1050F.
- 28-29. Tail-end collections. – Collections of coal retirement charges after the coal retirement bonds and all related financing costs have been repaid in full.
- 29-30. Transaction documents. – Forms of any purchase and sale agreements, administration agreements, servicing agreements, limited liability company agreements, indentures, or any other documents necessary to execute the issuance of coal retirement bonds.
- 30-31. True-up adjustment letter. – A letter applying the formulaic true-up mechanism proposed by a public utility and approved by the Commission in a financing order to be filed at least annually with the Commission to ensure coal

retirement charges are at a sufficient level to meet the public utility's coal retirement bond payment obligations.

~~31.32.~~ 31.32. Up-front financing costs. – Up-front financing costs, which will be financed from the proceeds of the coal retirement bonds, include the fees and expenses to obtain the financing orders, as well as the fees and expenses associated with the structuring, marketing and issuance of each series of coal retirement bonds, including: external and incremental internal legal fees, structuring advisory fees and expenses, any interest rate lock or swap fees and costs (including the cost, if any, associated with interest rate hedges), underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting fees, information technology programming costs, servicer's set-up costs, printing and marketing expenses, stock exchange listing fees and compliance fees, filing and registration fees, and the costs of the outside consultant and counsel, if any, retained by the Commission or the Public Staff. Up-front financing costs include reimbursement to the public utility for amounts advanced for payment of such costs.

(c) Procedure for Coal Retirement Securitization Proceeding.

1. Coal retirement cost review and approval schedule.
  - a. A public utility shall file a petition for review and approval of coal retirement costs at least 90 days prior to filing a petition for financing order for authority to issue coal retirement bonds.
  - b. Within 14 days after the date the petition for review and approval of coal retirement costs is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 180 days after the petition for approval of coal retirement costs is filed. The procedural schedule shall establish a discovery period of no longer than 60 days from the date the petition for review and approval of coal retirement costs is filed.
2. Financing order issuance schedule.
  - a. A public utility may file a petition for a financing order no sooner than 90 days after filing a petition for review and approval of coal retirement costs, if a petition for review and approval of coal retirement costs is filed.
  - b. Within 14 days after the date the petition for a financing order is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition for a financing order is filed.
  - c. No later than 135 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition.
  - d. A party to the securitization proceeding may petition the Commission for reconsideration of a financing order within five days after the date of its issuance.
  - e. Within 60 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina.

(d) Petition for approval of coal retirement costs.

1. Application of rule.

- a. Prior to a public utility filing for a petition for financing order, the public utility shall obtain Commission review and approval of applicable coal retirement costs proposed for financing, through one of the following mechanisms: (a) a prior general rate case order; (b) an order issued in a proceeding initiated for that purpose pursuant to a petition for review and approval of coal retirement costs; or (c) an order issued in a proceeding initiated for approval of a settlement agreement that governs the type and amount of principal costs that could be included in coal retirement costs and the public utility proposes to finance all or a portion of the principal costs using coal retirement bonds.
- b. Any petition for review and approval of coal retirement costs under Rule R8-[ ](d)1.a. (b) or (c) above shall be filed in a unique sub-docket of the requesting public utility.

2. Filing requirements.

- a. Any such petition shall include all of the following:
  - i. A description of the subcritical coal-fired generating facilities retired early or proposed to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of House Bill 951,
  - ii. The amount of coal retirement costs.
- b. A public utility seeking review and approval of proposed coal retirement costs must file a petition at least 90 days prior to the filing of a petition for financing order with respect to such costs.

(e) Order approving coal retirement costs.

- 1. An order reviewing and approving coal retirement costs issued by the Commission to a public utility shall include the following:
  - a. A determination of the amount of reasonable and prudent coal retirement costs, including any carrying costs, eligible to be securitized.
  - b. If the coal retirement costs are the subject of a settlement, approval of the settlement.

(f) Petition for approval of financing order.

1. Application of rule.

- a. Prior to a public utility issuing coal retirement bonds and implementing a coal retirement charge, the public utility shall obtain a Commission order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
- b. Any petition for a financing order shall be made in a unique sub-docket of the public utility's docket number; however, if a public utility has previously filed a petition for review and approval of coal retirement costs that are the subject coal retirement costs of a petition for financing order, the petition for financing order shall be filed in the same sub-docket as the petition for review and approval of coal retirement costs.

2. Filing requirements.

- a. A public utility may petition the Commission for issuance of a financing order. The petition shall include all of the following:

- i. A description of subcritical electric generating facilities that the public utility has retired early or proposes to retire early for the purpose of achieving the authorized carbon reduction goals set forth in Section 1 of House Bill 951, or if the public utility is subject to a settlement agreement governing coal retirement costs, a description of the settlement agreement.
- ii. The coal retirement costs.
- iii. An estimate of the financing costs related to the coal retirement bonds.
- iv. An estimate of the coal retirement charges necessary to recover the coal retirement costs and financing costs and the period for recovery of such costs.
- v. A comparison between the net present value of the costs to customers that are estimated to result from the issuance of coal retirement bonds and the costs that would result from the application of the traditional method of financing and recovering coal retirement costs from customers. The comparison should demonstrate that the issuance of coal retirement bonds and the imposition of coal retirement charges are expected to provide quantifiable benefits to customers. For purposes of this comparison, the traditional method of financing and recovering net book value of coal plants upon retirement shall mean the establishment of a regulatory asset and recovery of the amortization expenses over a period to be determined by the Commission plus a return on the unamortized balance at the public utility's weighted average cost of capital, as defined in its most recent base rate case proceeding before the Commission.
- vi. Direct testimony and exhibits supporting the petition.
- vii. If the public utility has received a Commission order reviewing and approving coal retirement costs pursuant to any of the mechanisms identified above, a description of the order reviewing and approving the coal retirement costs.
- viii. A proposed transaction structure including, a request for flexibility to tailor the structure to the then-existing market conditions, rating agency considerations, and investor preferences, in order that the issuance of coal retirement bonds achieve the statutory cost objectives.
- ix. A proposed issuance advice letter, true-up adjustment letter, and explanation of the proposed issuance advice letter procedure.
- x. A proposed formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal retirement charges.
- xi. A proposed coal retirement charge tariff.
- xii. A description of how coal retirement charges will be allocated among customer classes.
- xiii. At the public utility's option, a request to establish a regulatory asset to defer any prudently incurred excess amounts of financing costs to preserve for later recovery in the public utility's next general rate case proceeding.

- xiv. At the public utility's option, a request for a regulatory liability account to refund any amounts collected in excess of actual financing costs in the next general rate proceeding.
- xv. Proposed form of transaction documents.
- xvi. A summary of the securitizable balance.
- xvii. A proposed registration, rating agency, and issuance timeline.
- xviii. A proposed financing order containing the elements listed in subpart [(g)(1)] of this Rule.

(g) Financing order.

1. A financing order issued by the Commission to a public utility shall include all of the following:
  - a. Except for changes made pursuant to the formula-based mechanism authorized under this Rule, the amount of coal retirement costs to be financed using coal retirement bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through coal retirement charges and specify the period over which coal retirement costs and financing costs may be recovered.
  - b. A finding that the proposed issuance of coal retirement bonds and the imposition and collection of a coal retirement charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds.
  - c. A finding that the structuring and pricing of the coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in such financing order.
  - d. A requirement that, for so long as the coal retirement bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of coal retirement charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.
  - e. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal retirement charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of coal retirement bonds and financing costs and other required amounts and charges payable in connection with the coal retirement bonds.
  - f. The coal retirement property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure coal retirement bonds and all financing costs.
  - g. The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the coal retirement bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.

- h. How coal retirement charges will be allocated among customer classes.
  - i. A requirement that, after the final terms of an issuance of coal retirement bonds have been established and before the issuance of coal retirement bonds, the public utility determines the resulting initial coal retirement charge in accordance with the financing order and that such initial coal retirement charge be final and effective upon the issuance of such coal retirement bonds without further Commission action so long as the coal retirement charge is consistent with the financing order.
  - j. A method of tracing funds collected as coal retirement charges, or other proceeds of coal retirement property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any coal retirement property subject to a financing order under applicable law.
  - k. Any other conditions not otherwise inconsistent with this Rule that the Commission determines are appropriate.
  - l. A finding that the petition for financing order meets the requirements of this Rule.
  - m. A State of North Carolina pledge of nonimpairment in accordance with section (o) of this Rule.
  - n. A statement that coal retirement bonds are not public debt in accordance with section (m) of this Rule.
  - o. Approval and description of the issuance advice letter process.
  - p. Approval and copy of a proposed issuance advice letter, true-up adjustment Letter, and coal retirement charge tariff.
  - q. Approval of the form of transaction documents.
  - r. Findings regarding any required certifications and opinion letters to be given during the issuance advice letter process.
2. A financing order issued to a public utility may provide that creation of the public utility's coal retirement property is conditioned upon, and simultaneous with, the sale or other transfer of the coal retirement property to an assignee and the pledge of the coal retirement property to secure coal retirement bonds.
3. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of coal retirement charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of coal retirement bonds approved under the financing order. Within 30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical or clerical errors in its calculation. If the Commission informs the utility of mathematical or clerical errors

in its calculation, the utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.

4. Subsequent to the transfer of coal retirement property to an assignee or the issuance of coal retirement bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this Rule, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust coal retirement charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer coal retirement property or to cause coal retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.
5. Duration of financing order. –
  - a. A financing order remains in effect and coal retirement property under the financing order continues to exist until coal retirement bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such coal retirement bonds have been recovered in full.
  - b. A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its successors or assignees.

(h) Post-financing order process.

1. Bond advisory team process.
  - a. If the Commission determines that it is necessary to achieve the statutory cost objectives, a financing order may establish a bond advisory team:
    - i. Following issuance of a financing order, bond advisory team meetings shall be held to provide timely information to members regarding aspects of the structuring, marketing, and pricing of the coal retirement bonds.
    - ii. The public utility, the Commission, and the Public Staff shall designate staff, counsel, and consultants to participate on the bond advisory team on their behalf. However, the Public Staff, the Public Staff's designees, the Commission, and the Commission designees are not agents of the public utility in any manner by their participation on a bond advisory team.
    - iii. The bond advisory team may be present during communications with underwriters, credit rating agencies, and investors, the public utility shall use reasonable means to invite bond advisory team to such communications; the public utility shall invite members of the Bond advisory team to join bond advisory team meetings to review and comment on material aspects of the structuring, pricing, and marketing of the coal retirement bonds, including without limitation the following: the selection and retention of underwriters and other transaction participants; the terms of all transaction documents; the length of the bond terms; the interest rates of the bonds (including whether the interest rate is floating or fixed); the capitalization of the

- bonds; the transaction structure; the issuance strategy; appropriate credit enhancements; and the credit rating process.
- b. The public utility shall have the sole right to select all counsel and advisors for the public utility, the underwriters and any issuing entity.
  - c. The public utility shall retain all decision-making authority with respect to the structuring, marketing, and pricing of the coal retirement bonds.
2. Issuance advice letter process.
- a. No later than one day after pricing of the coal retirement bonds, the public utility shall provide an issuance advice letter to the Commission so that the Commission can determine whether the coal retirement bonds comply with the requirements set forth in the public utility's financing order.
  - b. No later than the day the public utility's issuance advice letter is filed, the public utility and each lead underwriter of the coal retirement bonds shall file with the Commission separate certifications confirming that the structuring, marketing, and pricing of coal retirement bonds resulted in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
  - c. The initial coal retirement charges and the final terms of the coal retirement bonds described in the issuance advice letter and true-up adjustment letter will be final unless, before noon on the third business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with the terms of the public utility's financing order.
3. Implementation of coal retirement charges.
- a. Ownership notification and separate line-item charge.
    - i. The public utility's electric bills must explicitly reflect that a portion of the charges on such bill represent coal retirement charges approved in a financing order. The electric bill must also include a statement explaining who is the owner of the rights to the coal retirement charges and, if applicable, that the public utility is acting as servicer for the owner of the rights to the coal retirement charges.
    - ii. The public utility shall identify amounts owed with respect to its coal retirement property as a separate line item on individual electric bills although if there are multiple series of coal retirement bonds, the several coal retirement charges may be consolidated into a single line item.
    - iii. A coal retirement charge tariff must indicate the coal retirement charge and the ownership of that charge.
  - b. True-up of coal retirement charges.
    - i. Coal retirement charges shall be adjusted at least semi-annually until 12 months prior to the last scheduled payment date of a series of the coal retirement bonds, at which point the coal retirement charges may be adjusted at the request of the public utility, to ensure that the amount collected from coal retirement charges is sufficient to pay the debt service on the coal retirement bonds and all financing costs.
    - ii. Upon the filing of a true-up adjustment letter made pursuant to a financing order, the Commission shall either administratively

approve the requested true-up calculation in writing or inform the servicer of the coal retirement bonds of any mathematical or clerical errors in its calculation as expeditiously as possible but no later than 30 days following the servicer's true-up filing; and that notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's filing of a true-up adjustment letter. No potential modification to correct an error in a true-up adjustment letter shall delay its effective date and any correction or modification which could not be made prior to the effective date shall be made in the next True-up adjustment letter. Upon administrative approval or the passage of 30 days without notification of a mathematical or clerical error, no further action of the Commission will be required prior to implementation of the true-up.

- iii. That upon any change to customer rates and charges stemming from the true-up mechanism, the public utility shall file appropriately revised tariff sheets, provided, however, that approval of the coal retirement charges shall not be delayed or otherwise adversely impacted by the Commission's decision with respect to the tariff.
- iv. Up-front financing costs.
  - (1) Once up-front financing costs are known, if actual financing costs are in excess of the amounts estimated, the public utility shall be permitted to pay them on behalf of any issuing entity and may establish a regulatory asset to defer any excess amounts of up-front financing costs, and preserve those costs to consider for later recovery in the public utility's next general rate case. In addition, the regulatory asset shall accrue carrying costs at the public utility's net-of-tax weighted average cost of capital returns.
  - (2) Any excess or over-collection of up-front financing costs may be set aside in a regulatory liability, accruing carrying costs at the public utility's net-of tax weighted average cost of capital returns, to be considered for return to customers in the public utility's next general rate case.
- v. On-going financing costs.
  - (1) The on-going financing costs incurred for the purpose of executing a coal retirement-securitization shall be recovered from coal retirement charges, taking into account the public utility's true-up mechanism and in accordance with this Rule.
  - (2) If determined necessary by the Commission, the public utility may provide detailed invoices and other supporting documentation, if applicable, and narrative explanations of on-going financing charges on a monthly basis, fifteen (15) days after the end of the previous month. If the public utility did not receive any invoices in the previous month, the public utility may notify the Public Staff that no invoices were received where determined necessary by the Commission.

- (3) If determined necessary by the Commission, the Public Staff may have the opportunity to audit on-going financing costs (including auditing through possible additional data requests) for mathematical or clerical errors, or charges incurred as a result of gross negligence, recklessness, or willful misconduct by either the public utility or issuing entity, and the Public Staff shall complete said audit within forty-five (45) days of receipt of the supporting documentation.
  - (4) If determined necessary by the Commission, the Public Staff may have the option to choose to audit the expense during review of the public utility's next true-up mechanism filing.
  - (5) If determined necessary by the Commission, the Public Staff may discuss with the public utility any concerns or proposed changes to the on-going financing cost expenses in an effort to reach an appropriate resolution regarding such on-going financing costs provided, however, that any resolution shall not impair the value of the coal retirement property, the coal retirement charges or the coal retirement bonds. In cases where a resolution cannot be reached between the public utility and Public Staff, the Public Staff will file a recommendation with the Commission, at the time the dispute arises, that the disputed amount be returned to customers, with carrying costs at the public utility's respective net-of-tax weighted average cost of capital returns, in the public utility's next general rate cases, with the issue to be resolved by the Commission in that proceeding.
- vi. Servicing and administration fees.
- (1) If determined necessary by the Commission, the public utility may establish regulatory asset or regulatory liability accounts for, separate and apart from the regulatory assets and liabilities of other types of securitization-related costs and benefits, the purpose of tracking (as received and incurred) servicing and administrative fees received by the public utility from the issuing entity and the incremental costs incurred by the public utility in fulfilling the required functions under the servicing and administrative agreements. Any regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at the public utility's respective net-of-tax weighted average cost of capital, and be considered for recovery from or returned to customers in the public utility's next general rate case.
- vii. Tail-end collections.
- (1) The Commission may require that any tail-end collections by the public utility be tracked separately and placed into a regulatory liability account, and accrue carrying costs at the public utility's net-of-tax weighted average cost of capital, to be considered for recovery in the public utility's next general rate case.

viii. Capital contributions.

- (1) The Commission may require that the public utility's capital contributions to an issuing entity earn a return at the interest rate of the highest tranche of the coal retirement bonds, which is expected to be less than the public utility's weighted average cost of capital.

c. Coal retirement charge collection period.

- i. A financing order and the coal retirement charges authorized thereby shall remain in effect until the coal retirement bonds and all financing costs (including tail-end collections and tax liabilities) related thereto have been paid or recovered in full.
- ii. A financing order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of the public utility or its successors or assignees.

4. Additional financing orders.

- a. At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding coal retirement bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in this Rule for a financing order. Effective upon retirement of the refunded coal retirement bonds and the issuance of new coal retirement bonds, the Commission shall adjust the related coal retirement charges accordingly.

(i) Coal retirement property.

1. Provisions applicable to coal retirement property.

- a. All coal retirement property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of coal retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal retirement charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.

- b. All coal retirement property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of coal retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal retirement charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public

utility or its successors or assignees and the future consumption of electricity by customers.

- c. Coal retirement property specified in a financing order exists until coal retirement bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such coal retirement bonds have been recovered in full.
- d. All or any portion of coal retirement property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the public utility and created for the limited purpose of acquiring, owning, or administering coal retirement property or issuing coal retirement bonds under the financing order. All or any portion of coal retirement property may be pledged to secure coal retirement bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of coal retirement property by a public utility, or an affiliate of the public utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission.
- e. If a public utility defaults on any required payment of charges arising from coal retirement property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the coal retirement property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.
- f. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in coal retirement property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity. Any successor to a public utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the coal retirement property. Nothing in this sub-subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.
- g. Coal retirement bonds shall be nonrecourse to the credit or any assets of the public utility other than the coal retirement property as specified in the financing order and any rights under any ancillary agreement.

2. Provisions applicable to security interests.

- a. The creation, perfection, and enforcement of any security interest in coal retirement property to secure the repayment of the principal and interest and other amounts payable in respect of coal retirement bonds; amounts payable under any ancillary agreement and other financing costs are governed by this Rule and not by the provisions of the Code.
- b. A security interest in coal retirement property is created, valid, and binding and perfected at the later of the time: (i) the financing order is issued, (ii) a security agreement is executed and delivered by the debtor granting such security interest, (iii) the debtor has rights in such coal retirement property or the power to transfer rights in such coal retirement property, or (iv) value is received for the coal retirement property. The description of coal retirement property in a security agreement is sufficient if the description refers to this Rule and the financing order creating the coal retirement property.
- c. A security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of a financing statement with the office of the Secretary of State, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the coal retirement property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, and shall have priority over all competing claims other than any prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this Rule.
- d. The Secretary of State shall maintain any financing statement filed to perfect any security interest under this Rule in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of a financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code.
- e. The priority of a security interest in coal retirement property is not affected by the commingling of coal retirement charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all coal retirement charges that are deposited in any cash or deposit account of the qualifying utility in which coal retirement charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.
- f. No application of the formula-based adjustment mechanism as provided in this Rule will affect the validity, perfection, or priority of a security interest in or transfer of coal retirement property.
- g. If a default or termination occurs under the coal retirement bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any coal retirement property as if they were secured parties with a perfected and prior lien under the Code, and the Commission may order amounts arising from coal retirement charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of

the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the coal retirement charges.

3. Provisions applicable to the sale, assignment, or transfer of coal retirement property.

a. Any sale, assignment, or other transfer of coal retirement property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the coal retirement property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in coal retirement property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in coal retirement property may be created only when all of the following have occurred: (i) the financing order creating the coal retirement property has become effective, (ii) the documents evidencing the transfer of coal retirement property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the coal retirement property. After such a transaction, the coal retirement property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the coal retirement property perfected in accordance with this Rule.

b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:

- i. Commingling of coal retirement charges with other amounts.
- ii. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the coal retirement property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of coal retirement charges.
- iii. Any recourse that the purchaser may have against the seller.
- iv. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
- v. The obligation of the seller to collect coal retirement charges on behalf of an assignee.
- vi. The transferor acting as the servicer of the coal retirement charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in coal retirement property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the coal retirement charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.

- vii. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
  - viii. The granting or providing to bondholders a preferred right to the coal retirement property or credit enhancement by the public utility or its affiliates with respect to such coal retirement bonds.
  - ix. Any application of the formula-based adjustment mechanism as provided in this Rule.
- c. Any right that a public utility has in the coal retirement property before its pledge, sale, or transfer or any other right created under this Rule or created in the financing order and assignable under this Rule or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in coal retirement property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such coal retirement property or the power to transfer rights in such coal retirement property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of coal retirement bonds, and (iv) the receipt of value for the coal retirement property. An enforceable transfer of an interest in coal retirement property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with this Rule. The transfer is perfected against third parties as of the date of filing.
- d. The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of coal retirement property under this Rule in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of coal retirement property.
- e. The priority of a transfer perfected under this Rule is not impaired by any later modification of the financing order or coal retirement property or by the commingling of funds arising from coal retirement property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under this Rule, is terminated when they are transferred to a segregated account for the assignee or a financing party. If coal retirement property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.
- f. The priority of the conflicting interests of assignees in the same interest or rights in any coal retirement property is determined as follows:
- i. Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with this Rule.
  - ii. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.

- iii. A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.
- (j) Description or indication of property. – The description of coal retirement property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the coal retirement property and states that the agreement or financing statement covers all or part of the property described in the financing order. This Rule applies to all purported transfers of, and all purported grants or liens or security interests in, coal retirement property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.
- (k) Financing statements. – All financing statements referenced in this Rule are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.
- (l) Choice of law. – The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any coal retirement property shall be the laws of this State.
- (m) Coal retirement bonds not public debt. – Neither the State nor its political subdivisions are liable on any coal retirement bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of coal retirement bonds does not, directly, indirectly, or contingently, obligate the State or any agency, political subdivision, or instrumentality of the State to levy any tax or make any appropriation for payment of the coal retirement bonds, other than in their capacity as consumers of electricity. All coal retirement bonds must contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of North Carolina is pledged to the payment of the principal of, or interest on, this bond."
- (n) Legal investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in coal retirement bonds:
  - 1. Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.
  - 2. Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.
  - 3. Personal representatives, guardians, trustees, and other fiduciaries.
  - 4. All other persons authorized to invest in bonds or other obligations of a similar nature
- (o) Obligation of nonimpairment.
  - 1. The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the coal retirement property, and other financing parties

that the State and its agencies will not take any action listed in this subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the coal retirement charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:

- a. Alter the provisions of this Rule, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create coal retirement property, and make the coal retirement charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
  - b. Take or permit any action that impairs or would impair the value of coal retirement property or the security for the coal retirement bonds or revises the coal retirement costs for which recovery is authorized.
  - c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
  - d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this Rule, reduce, alter, or impair coal retirement charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related coal retirement bonds have been paid and performed in full.
2. Any person or entity that issues coal retirement bonds may include the language specified in this Rule in the coal retirement bonds and related documentation.
- (p) Not a public utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this Rule.
  - (q) Conflicts. – If there is a conflict between this Rule and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in coal retirement property, this Rule shall govern.
  - (r) Consultation. – In making determinations under this Rule, the Commission or public staff or both may engage an outside consultant and counsel.
  - (s) Effect of invalidity. – If any provision of this Rule is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this Rule which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all coal retirement bonds issued or authorized in a financing order issued under this Rule before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.